

Date of decision: 05/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BABUBEN V PATEL

VS

MEHSANA DISTRICT PANCHAYAT (FAMILY WELFARE BRANCH)

Appearance:

MR RC JANI for Petitioner  
MR HS MUNSHAW for Respondent No. 1  
MR. D.A.BAMBHANA for Respondent No. 2, 3

Coram : MR.JUSTICE C.K.THAKKER

ORAL JUDGEMENT

Rule. Mr.H.S. Munshaw appears for respondent No.1 and waives service of Rule. Mr.D.A. Bambhania appears for Respondent Nos.2 and 3 and waives service of rule on behalf of respondent Nos.2 and 3. In the facts and circumstances of the case, this petition is taken up to day for final hearing.

This petition is filed by the petitioner for an appropriate writ, direction or order quashing and setting aside the order at Annexure.B dt. August 24, 1993 passed by the Additional District Health Officer, District Panchayat, Mehsana, respondent no.1 herein, by which period between March 30, 1988 and July 10, 1992 is ordered to be treated as unauthorised absence.

It is the case of the petitioner that she was serving as a Mid-wife with the respondent since 1994. On March 29, 1988, she was suspended on account of certain allegations of misconduct levelled against her. At conclusion of the inquiry, it was held that out of three allegations, allegation no.1 was partly proved whereas allegation nos.2 and 3 were wholly proved. The petitioner was found to be guilty of the allegations levelled against her and by an order dt. August 24, 1993, punishment of stoppage of two increments for a period of two years was imposed on her. A proposal was made to reinstate her in service which was accepted and accordingly by the impugned order she was reinstated. It is, however, mentioned the period between 30.3.1988 and 10.7.1992 would be treated as unauthorised absence.

It is contended by the learned counsel for the petitioner that before the impugned order was passed, no show cause notice was issued, no explanation was sought and no hearing was afforded to the petitioner. It cannot be said that the impugned order adversely affects the petitioner inasmuch as the period is ordered to be treated as unauthorised absence. In these circumstances, before passing the said order, principles of natural justice were required to be observed. Reliance was placed in this connections on decisions of the Hon'ble Supreme Court in B.R.Patel v. State of Maharashtra, reported in AIR 1968 SC 800 and Depot Manager, Andhra Pradesh State Road Transport Corporation, Hanumakonda v. V.Venkateswarulu, AIR 1995 SC 258. It was held by Apex Court that before passing such order, the petitioner must be afforded opportunity of hearing. In V.Venkateswarulu's case (supra) the Hon'ble Supreme Court held that on acquittal and reinstatement an employee without any further scrutiny is not entitled to the payment of full salary for the period during which he remained under suspension. Full salary can be withheld on justifiable grounds. It was, however, held that the authority has to pass a reasoned order after affording an opportunity to the employee concerned.

In the instant case, as contended by the petitioner, no opportunity of hearing was afforded to her before treating the period between March 30, 1988 and July 10, 1992 as unauthorised absence. Only on that ground and without observing anything on merits, the petition is allowed and it is directed that it is open to the authority to pass an appropriate order in accordance with law after affording opportunity of hearing to the petitioner. Rule is made absolute to the above extent with no order as to costs.

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